



"220.0623"



STATE OF CALIFORNIA

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Executive Director

March 7, 1989

Re: 0700 - 14
1988-89 Assessment on Land Increased From \$627,810 to \$1,600,000

Dear Mr. I

This is in response to your February 28 request for an opinion regarding the property tax effects of a 1987 sale and leaseback agreement between Ham i, d., a California Limited Partnership and Lea

Your letter states that the San Francisco Assessors' office asked that you forward the materials enclosed with your letter to us. You state that you are seeking a cancellation of the 1987 land reappraisal on the subject property (t) on the grounds that the sale and leaseback agreement with Lea was essentially a refinancing arrangement and not a true change of ownership. You further state that Lea was basically a private lender giving the owners a \$1,600,000 loan on the property and that for her own business reasons she needed the transaction to be structured as a sale and leaseback on the land under the building rather than a second trust deed. You state that the materials enclosed with your letter evidence the intent of the parties.

The information enclosed with your letter consists of a letter dated January 18, 1989, from Mr. Bob , General Partner, of the Ham Partnership; a September 14, 1987, letter to Home Federal Savings and Loan Association of San Diego from Mr. Robert attorney for the Ham Partnership; an October 28, 1987, letter to West Insurance Company from Mr. Thomas i counsel for Home Federal Savings and Loan Association; and a 40-page Ground Lease, dated October 20, 1987, for property located at , San Francisco, between Lea as Lessor and Ham Partnership as Lessee.

Although not included with the materials submitted, we assume that on or about October 20, 1987, the Ham Partnership

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executed a grant deed which transferred ownership of the subject property from the partnership to Lea. The question presented is whether this deed transferred beneficial ownership of the property to Lea or whether it transferred legal title only as a security interest.

Revenue and Taxation Code section 60 defines "change in ownership" as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Revenue and Taxation Code section 62, subdivision (c)(1), provides that change in ownership shall not include the creation of a security interest. Thus, if the deed transferred full beneficial ownership to Lea, then the transfer constituted a change in ownership which requires a reappraisal of the property. If the deed did not transfer full beneficial ownership, however, and transferred only a security interest then the transfer did not result in a change in ownership. (See also subdivisions (k)(1) and (k)(4) of Property Tax Rule 462.)

Evidence Code section 662 provides that the owner of legal title to property is presumed to be the owner of the full beneficial title. It further provides that this presumption may be rebutted only by "clear and convincing proof." If our assumption regarding the deed is correct, then Lea is presumed to be the full beneficial owner of the property and this presumption may only be rebutted by clear and convincing proof.

While our analysis of the question of whether the presumption has been overcome by clear and convincing proof would ordinarily require a rather extensive analysis of the 40-page Ground Lease as well as the other information provided, it appears that the last section of the Lease is dispositive of the issue. That section provides as follows:

42. Bona Fide Ground Lease. The parties hereto hereby acknowledge and agree that the Lessor's purchase of the property and Lessee's lease back of the property pursuant to this Ground Lease constitute a bona fide purchase and lease of the property, and that said purchase and/or this Ground Lease is not, are not, and shall not be construed to be a financing transaction for any purpose whatsoever. Each party waives the provisions of Civil Code Section 2925, including, without limitation, the right to assert that said purchase and/or Ground Lease constitutes a mortgage or deed of trust.

The Lease which you have submitted as evidence of the intent of the parties contains a clear and unambiguous statement by the parties that the transaction is a "bona fide purchase and lease of the property" and not a "financing transaction for any purpose

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whatsoever." In light of these emphatic statements of intent, we are unable to conclude that the Evidence Code section 662 presumption has been overcome by clear and convincing proof. Thus, we conclude that the evidence presented demonstrates that the San Francisco Assessor correctly reappraised this property in 1987.

The opinions expressed herein are, of course, advisory only and they are not binding upon the San Francisco Assessor.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard H. Cohnsner", written in a cursive style.

Richard H. Cohnsner
Assistant Chief Counsel

RHO:cb
1854D

cc: The Honorable Samuel Duca, Assessor
City and County of San Francisco
Mr. John W. Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton